Committee: Budget and Taxation  
Testimony on: HB 1091 “Public-Private Partnerships - Reforms”  
Position: Support  
Hearing Date: April 3, 2019

The Maryland Sierra Club strongly supports HB 1091 as passed by the House. In addition, we believe that the better policy course would be to amend the bill to make explicit that its provisions apply to the public-private partnership which has been proposed by Governor Hogan to add toll lanes to I-270 and the I-495 (the Capital Beltway). However, we also recognize the challenges presented at this stage of the session, and strongly urge that, at a minimum, HB 1091, as passed by the House, be enacted by the General Assembly.

The proposed changes to Maryland’s public-private partnership (P3) law are reasonable and prudent safeguards to protect our state from potential financial problems that could occur with very costly projects, including the Governor’s proposed highway project, involving contracts lasting 50 years or more where funding is supposed to come entirely from a P3. In addition, given the magnitude of such projects, it is essential that when a project, such as the Governor’s highway proposal, is required to have an environmental impact statement (EIS) prepared pursuant to the National Environmental Policy Act, the necessary EIS be prepared before – not after – the determination is made whether or not to approve the P3. Due diligence requires that Maryland decide whether to embark on such major projects only after conducting a financial and environmental analysis and review.

For every P3 with a total value that exceeds $500 million, the bill would require: a pre-solicitation report for each contract under the P3; a completed EIS in each pre-solicitation report; an independent credit review of each prime contractor and the contractor’s private funding sources; and that each P3 agreement specify a minimum credit rating to be maintained by the contractor and its private funding sources.

The bill also specifies that the Legislative Policy Committee shall review and comment on pre-solicitation reports for proposed P3s when the General Assembly is not in session. If a P3 agreement requires the state or a successor entity take over operations and maintenance of a project, the bill would require that all toll revenue or other charges related to the project be assigned to the state or a successor entity to be used for the operations and maintenance of the project. The bill also states that if a P3 agreement provides for any sharing of fees or charges, the P3 shall reimburse the state for advanced project expenses.

An example of a potential problem that could occur with P3s was discussed in a December 2016 study by the U.S. Department of Transportation, titled “Revenue Risk Sharing for Highway Public-Private Partnership Concessions.” The study found that during the past decade, many U.S. highway P3s experienced financial distress due to lower-than-projected traffic and revenue associated with the “optimism bias” that often occurs when these contracts are bid. The end
result was that states often had to absorb some of the liabilities. Those developers willing to assume revenue risk were likely to charge a premium for assuming the risk which could lessen the value the public was to receive from the P3.

The requirement that an EIS be included in the pre-solicitation report is essential because large transportation projects should not proceed without first understanding their impact on climate change, the air we breathe, the water we drink, and our parks and waterways, including the Chesapeake Bay. Indeed, the Department of Legislative Services strongly recommended in a January 7, 2019, letter to this Committee that “[t]he General Assembly should amend the P3 statute to prohibit the submission of a pre-solicitation report prior to the availability of a draft EIS for any project that would require development of an EIS.”

It is particularly timely that these safeguards be added to the P3 law now, before the state potentially decides whether to enter into P3 agreements to implement the Governor’s $11 billion proposal to add four toll lanes to the Capital Beltway and I-270. Numerous studies show that expanding highways to solve congestion does not work because more lanes encourage more people to drive, which leads to more congestion and more climate and health-damaging air pollution from the increasing number of cars on the road.

The transportation sector is already the largest source of carbon pollution in Maryland. The Governor’s highway expansion would worsen this problem, and make it unlikely the state would meet its legislatively-mandated Greenhouse Gas Reduction Act goal of reducing economy-wide greenhouse gas pollution 40% by 2030. According to Maryland Department of Transportation data from April 2018, we already are on course to exceed our on-road emissions goal by nearly five million metric tons – the carbon dioxide equivalent of emissions from more than one million passenger cars – even if key threatened federal and state-planned carbon reduction programs are fully implemented.

Instead of expanding highways that do not fix congestion problems, we should direct more of our transportation dollars to expanding rail and bus service, and car and van-pooling, as well as promoting walkable, bikeable communities. Our goal should be to get more people to where they want to be in a reliable, environmentally clean manner, versus enabling more vehicles to travel faster on highways.

In summary, the state should not rush into long-term P3 contracts without analyzing the financial and environmental risks beforehand. Major transportation investments need to be consistent with our goals to reduce climate, air and water pollution. The safeguards this bill would add to the P3 statute are reasonable and prudent, and we urge a favorable report on HB 1091.

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Founded in 1892, the Sierra Club is America’s oldest and largest grassroots environmental organization. The Maryland Chapter has over 70,000 members and supporters, and the Sierra Club nationwide has about 800,000 members.